Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge | ) | CC Docket Nos. 96-262, 94-1, 91-213, 95-72 |

**PETITION FOR RECONSIDERATION OR CLARIFICATION OF FOURTH ORDER ON RECONSIDERATION OF U S WEST, INC.**

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February 12, 1998

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## SUMMARY

U S WEST, Inc. requests the Commission to clarify or modify its findings in the Fourth Order On Reconsideration with regard to the application of the Commission's rules to the following two situations:

(1) U S WEST believes that carriers who offer Internet access and internal connections to eligible schools and libraries should not be required to submit bids at prices no higher than the carriers' "Lowest Corresponding Price," because non-carriers are also providers of Internet access and internal connections to schools and libraries but they are not subject to the Commission's jurisdiction or to the Commission's "Lowest Corresponding Price" requirement in 47 C.F.R. Section 54.511.

(2) U S WEST believes that term commitments for telecommunications services which are made on or prior to July 10, 1997 by eligible schools and libraries and rural health care providers, or after July 10, 1997 for services through December 31, 1998, pursuant to a carrier's FCC tariffs should be regarded as "existing contracts" eligible for support under 47 C.F.R. Sections 54.511(c) and 54.604.

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**PETITION FOR RECONSIDERATION OR CLARIFICATION OF FOURTH ORDER ON RECONSIDERATION OF U S WEST, INC.**

U S WEST, Inc. ("U S WEST") hereby submits this Petition for Reconsideration or Clarification of the Fourth Order On Reconsideration.[1] U S WEST requests the Federal Communications Commission ("Commission" or "FCC") to clarify or, if necessary, to modify the application of the Commission's requirements in two common situations involving schools, libraries, and rural health care providers which U S WEST believes the Commission has not fully considered.

I. THE FOURTH ORDER ON RECONSIDERATION FAILS TO ADDRESS SOME FUNDAMENTAL ISSUES WHICH WERE RAISED IN PETITIONS FOR RECONSIDERATION MORE THAN SIX MONTHS AGO

The Fourth Order On Reconsideration consists of a collage of year-end housekeeping items. As Commissioner Susan Ness said: "Today's decision provides

[1] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order On Reconsideration, FCC 97-420, rel. Dec. 30, 1997 ("Fourth Order On Reconsideration").

clarifications and mid-course corrections on dozens of issues that have arisen in the course of our universal service proceeding" and which "require resolution before January 1, 1998."[2] Given the complexity of the subject matter and the Commission's new rules governing universal service, most of these clarifications regarding the schools and libraries and rural health care provider support mechanisms were necessary, although, as U S WEST's comments in this Petition demonstrate, in some cases these clarifications failed to address completely all aspects of an issue faced by a provider or by a beneficiary of the schools and libraries and rural health care provider support programs.

Moreover, as Commissioner Powell said: "this order does not reach some of the more fundamental questions regarding universal service."[3] One of those questions is whether the Commission's proposed support mechanism, which will provide federal support for only 25 percent of the cost of universal service in high-cost areas and which will only be funded by assessments on interstate revenues, will comply with the mandate of Congress in Section 254(b)(5) of the 1996 Act which requires that support be "specific, predictable and sufficient."

A large number of state commissions[4] as well as rural independent local

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[2] Id. at Separate Statement of Commissioner Susan Ness at 1.

[3] Id. at Separate Statement of Commissioner Michael K. Powell at 2.

[4] See, e.g., Comments of the Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Maine, Montana, New Hampshire, New Mexico, North Carolina, South Carolina, Vermont, and West Virginia State Regulatory Agencies on the Commission's Report to Congress on Universal Service, filed herein Jan. 26, 1998.

exchange carriers ("LEC") and regional incumbent LECs such as U S WEST,[5] BellSouth,[6] and GTE[7] have expressed serious concern that the Commission's 25 percent/75 percent plan, where the states will be required to support 75 percent of the cost of providing universal service in high-cost areas, will place significant upward pressure on local rates in rural states with the result that quality services will not be available at "just, reasonable, and affordable rates" as mandated by Congress.[8]

As Commissioner Furchtgott-Roth said in his Dissenting Statement to the Fourth Order On Reconsideration: "considerable doubts remain about whether the Commission's universal service programs fully meet all of the requirements of Section 254 and about whether the universal service programs are entirely within the letter of the law."[9] "I believe that this Order is a lost opportunity to address some of the fundamental issues that have been raised about universal service."[10]

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[5] Petition for Reconsideration and Clarification of U S WEST, Inc. filed herein July 17, 1997 at 2-8; Comments of U S WEST, Inc. for the Commission's Report to Congress filed herein Jan. 26, 1998; Reply Comments of U S WEST, Inc. for the Commission's Report to Congress filed herein Feb. 6, 1998.

[6] Comments of BellSouth Corporation, filed herein Jan. 26, 1998.

[7] Comments of GTE Service Corporation, filed herein Jan. 26, 1998.

[8] 47 U.S.C. § 254(b)(1).

[9] Fourth Order on Reconsideration at Dissenting Statement of Commissioner Harold Furchtgott-Roth at 1.

[10] Id. at 2 (emphasis added).

## II. COMMON CARRIERS WHO OFFER INTERNET ACCESS AND INTERNAL CONNECTIONS TO ELIGIBLE SCHOOLS AND LIBRARIES SHOULD NOT BE REQUIRED TO SUBMIT BIDS BASED UPON THE CARRIER'S "LOWEST CORRESPONDING PRICE"

In the Universal Service Order, the Commission concluded that carriers who provide telecommunications services to eligible schools and libraries can offer to do so only at prices no higher than the lowest price charged to similarly-situated non-residential customers for similar services ("Lowest Corresponding Price").[11]

The Commission also concluded that schools and libraries should receive discounts for Internet access service[12] and for the installation and maintenance of "internal connections"[13] which include wireline intraschool connections[14] as well as routers, hubs, file servers and the software that file servers need to operate.[15] The Commission concluded that carriers who provide Internet access and internal connections to schools and libraries must offer to do so at prices no higher than the Lowest Corresponding Price.[16]

In the Fourth Order On Reconsideration, the Commission affirmed this requirement, but said that "a provider will not be required to match a price it

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[11] In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9031-32 ¶ 484 (1997) ("Universal Service Order"); appeals pending sub noms. Texas Office of Public Utility Counsel, et al. v. FCC, 97-60421 (5th Cir.); on recon., 12 FCC Rcd. 10095 (1997).

[12] Universal Service Order at 9008-9 ¶ 436.

[13] Id. at 9017 ¶¶ 452-53.

[14] Id. at 9019-20 ¶ 457.

[15] Id. at 9021-22 ¶ 460.

[16] Id. at 9033-34 ¶ 488. This requirement is codified in the Commission's rule, 47 C.F.R. § 54.511(b).

offered to a customer under a special regulatory subsidy or that appeared in a contract negotiated under very different conditions."[17] While carriers who are subject to the Commission's jurisdiction offer telecommunications services, Internet access, and internal connections to schools and libraries, entities who are not subject to the Commission's jurisdiction or to the jurisdiction of state commissions are also eligible to offer Internet access and internal connections to schools and libraries and, under the Universal Service Order, under the Commission's rules, and under the Fourth Order On Reconsideration, to obtain reimbursement from the Schools and Libraries Fund. However, most of these providers are not subject to the Commission's requirement to offer services at prices no higher than their Lowest Corresponding Price, because they are not subject to the Commission's jurisdiction or to the jurisdiction of a state commission.

Internet access and internal connections are intensely competitive product and service offerings. Purchases and maintenance of customer provided equipment ("CPE") including routers, hubs, and servers can be made by schools and libraries from any number of vendors and contractors, most of whom are not subject to the Commission's jurisdiction and who are therefore not subject to the Commission's requirement to offer prices no higher than their Lowest Corresponding Price to schools and libraries. Similarly, the installation and maintenance of inside wire can be provided to schools and libraries by contractors who are not subject to the Commission's rule. The same is true of Internet access which is today provided by

[17] Fourth Order On Reconsideration ¶ 141.

many entities who are not carriers and who are not subject to the Commission's Lowest Corresponding Price rule.

It could be argued that the dispute resolution process provides the Commission and state commissions with authority to address complaints about a non-carrier's compliance with the Commission's Lowest Corresponding Price requirement. However, it seems unlikely that the dispute resolution process would be invoked, in part because the prices charged by non-carriers are not publicly available and in part because the large number of providers of Internet access and internal connections provide intense competition to each other and offer schools and libraries a wide choice of options.

All providers, both carrier and non-carrier, who wish to offer Internet access or internal connections to schools and libraries must participate in the competitive bidding process which itself provides the necessary safeguard to ensure that schools and libraries obtain the lowest possible price. Because these products and services are intensely competitive and because most providers of Internet access and internal connections are not subject to the Commission's jurisdiction or rules, the Commission should modify its rule or clarify that the Lowest Corresponding Price requirement does not apply to carriers and non-carriers who offer Internet access and internal connections to schools and libraries.

The Commission recognized an exception to the Lowest Corresponding Price requirement in the Fourth Order On Reconsideration for prices offered to customers which were the result of a contract negotiation. Sales, installation, and maintenance of internal connection arguably qualify under this exception. Because the sale of CPE by carriers is not subject to regulation, the price of CPE is frequently discounted as an inducement to end-user customers to purchase tariffed telecommunications services as part of a package or in anticipation of the customer's purchase of network services in the near future. Accordingly, the Lowest Corresponding Price of CPE or of other internal connections which may have been sold by a carrier is frequently unique to the transaction for which it was offered. It does not represent a standard or typical price offered to the general public. It would be unfair to require a carrier to offer the same price to a school or library or any other customer when the price was offered only as part of a unique negotiated transaction with a particular customer.

Because these products and services are offered by non-carriers who are not subject to the Commission's jurisdiction and because they are intensely competitive, the Commission should clarify that Internet access and internal connections are not subject to the Lowest Corresponding Price requirement in 47 C.F.R. Section 54.511.

## III. THE COMMISSION SHOULD CLARIFY THAT TERM COMMITMENTS FOR TELECOMMUNICATIONS SERVICES WHICH ARE MADE ON OR PRIOR TO JULY 10, 1997 BY ELIGIBLE SCHOOLS AND LIBRARIES AND RURAL HEALTH CARE PROVIDERS, OR AFTER JULY 10, 1997 FOR SERVICES UP TO DECEMBER 31, 1998, PURSUANT TO A CARRIER'S FCC TARIFFS QUALIFY AS "EXISTING CONTRACTS" ELIGIBLE FOR SUPPORT

### A. The Commission Recognized An Exemption For Services Subject To An "Existing Contract"

In the Universal Service Order, the Commission concluded that eligible schools and libraries must solicit competitive bids for all services eligible for discounts under Section 254(h) of the 1996 Act.[18] However, the Commission recognized an exception to this requirement if the school or library had signed a contract before November 8, 1996 for such services.[19] The Commission reasoned that it would not be in the public interest to penalize schools and libraries that had already entered into contracts for service to refuse to allow them to obtain discounts for their existing contract rate.[20] The Commission wisely chose to allow flexibility for schools and libraries to continue to realize the benefits of longer-term contracts they may have already signed while allowing them to apply discounts to their existing contract rates for the remaining term of the contract. Such contractual commitments by schools and libraries made before November 8, 1996 were referred to by the Commission as "existing contracts," were eligible for discounts, and were exempted from the competitive bidding requirements.

In the Fourth Order On Reconsideration, the Commission changed the date for such commitments: "We conclude that a contract of any duration signed on or before July 10, 1997 will be considered an existing contract under our rules and therefore exempt from the competitive bid requirement for the life of the contract. Discounts will be provided for eligible services that are the subject of such contracts on a going-forward basis beginning on the first date that schools and libraries are

[18] Universal Service Order, 12 FCC Rcd. at 9028-29 ¶¶ 479-80.

[19] Id. at 9062-63 ¶¶ 545-46.

[20] Id. at 9064 ¶ 548.

eligible for discounts."[21]

The Commission also said that "contracts signed after July 10, 1997 and before the date on which the Schools and Libraries Corporation website is fully operational will be eligible for support and exempt from the competitive bid requirement for services provided through December 31, 1998. Contracts that are signed after July 10, 1997 are only eligible for support for services received between January 1 and December 31, 1998, regardless of the term or duration of the contract as a whole."[22]

The policy underlying these conclusions in the Fourth Order On Reconsideration remains the same: Schools and libraries should not be penalized for commitments they may have made to obtain potentially lower prices before the competitive bidding system became operational.[23] Such services are eligible for discounts: (1) on the rate the school or library is currently paying either until the commitment terminates or is otherwise satisfied in the case of contractual commitments made before July 10, 1997, and (2) on the rate the school or library is currently paying until December 31, 1998 for contractual commitments made after July 10, 1997 but before the website became operational.

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[21] Fourth Order On Reconsideration ¶ 217; and id. at Appendix A, 47 C.F.R. § 54.511(c).

[22] Id. ¶ 217.

[23] The Schools and Libraries Corporation announced that the website would open on January 30, 1998. Public Notice, DA 98-129, rel. Jan. 26, 1998.

## B. Telecommunications Services Purchased Under A Carrier's Interstate Tariff, Pursuant To Which The School Or Library Or Rural Health Care Provider Has Made A Term Commitment, Should Be Regarded As "Existing Contracts" Under 47 C.F.R. Section 54.511(c) And 47 C.F.R. Section 604(a)

While many carriers such as U S WEST are permitted to provide services pursuant to a signed contract with the customer in the intrastate jurisdiction, U S WEST's services in the interstate jurisdiction are only provided pursuant to tariff. However, U S WEST and other carriers have designed interstate tariffs which provide an end-user customer with many of the same economic benefits, as well as liabilities, of a privately negotiated and signed contract. Their interstate tariffs contain all of the material terms and conditions which would otherwise be contained in a contract.

U S WEST believes that the same public policy considerations which supported the Commission's adoption of the exemption for "existing contracts" also apply to services purchased under Rate Stability Plans and Variable Term Pricing Plans, or similar plans offered by other carriers, in the FCC tariff even though the customer's commitment may not be evidenced by a signed contract.

For example, customers including schools and libraries may purchase analog private line service under a Rate Stability Plan described in U S WEST's Tariff F.C.C. No. 5, Section 7.4.9 which permits a customer to stabilize its channel termination monthly rate and associated transport channel monthly rates for a fixed period of 36, 60, or 84 months.. The minimum service period is 12 months and the customer is obligated to purchase a minimum of 348 four-wire channel terminations for 36 months, or 383 channel terminations for 60 months, or 423 channel terminations for 84 months. If the number of channel terminations purchased by the customer falls below 348, the tariff provides that the monthly rates will revert to the current month-to-month rates and that discontinuance or termination charges may apply as provided in Section 7.4.17 of the tariff.

Similarly, customers including schools and libraries may purchase DS1 Service or Digital Data Service under a Variable Term Pricing Plan described in U S WEST's Tariff F.C.C. No. 5, Section 7.4.10 which permits a customer to obtain these services at the then-effective monthly rates with no U S WEST-initiated rate increase for 36 or 60 months. If a customer terminates service before the end of its commitment, the tariff provides that the customer may be liable for discontinuance or termination charges as described in Section 7.4.17 of the tariff.

In addition, the following services may be purchased under the following fixed periods and rate plans described in U S WEST's interstate tariff:

DS3 Service
12, 24, 36, 60 or 120 months
U S WEST Tariff F.C.C. No. 5, Section 7.4.11

Simultaneous Voice Data Service (SVDS)
36 or 60 months
U S WEST Tariff F.C.C. No. 5, Section 7.4.13

Broadcast Video Service
12, 36 or 60 months
U S WEST Tariff F.C.C. No. 5, Section 7.4.14.A

Commercial Video Service
12, 36, 60, 84 or 120 months
U S WEST Tariff F.C.C. No. 5, Section 7.4.14.B

Synchronous Service Transport (SST)
12, 24, 36 or 60 months
U S WEST Tariff F.C.C. No. 5, Section 7.4.15

A copy of U S WEST's Tariff F.C.C. No. 5, Section 7.4 referenced above is attached hereto as Attachment 1.

The customer does not sign a contract to obtain services under these Plans. Nevertheless, when the customer selects a service and chooses a payment period, the customer is bound by the terms and conditions in the tariff which describe the customer's rights and obligations under the arrangement as well the customer's liabilities in the event of early termination or default. Whether the customer's rights, obligations, and liabilities are contained in a signed contract between the customer and the carrier or in an effective tariff on file with the Commission, the customer is legally bound to a long-term commitment which the customer chooses to enter into to obtain lower prices or as a hedge against future price increases.

Even though the customer does not sign a contract, the Commission should clarify that such Plans under a carrier's interstate tariff would qualify as existing contracts under the Commission's rule, 47 C.F.R. Section 54.511(c). If a school or library made a commitment under the FCC tariff on or before July 10, 1997 for a service, the customer should be entitled to discounts for the duration of the customer's commitment under the tariff. Similarly, if a school or library made a commitment for service under the FCC tariff after July 10, 1997 but before January 30, 1998 (the date the web site became operational) for a service, the customer should be entitled to discounts up to, but not after, December 31, 1998.

The same policy, the same reasoning, and the same conclusions should apply to the exemption for "existing contracts" for rural health care providers under the Commission's rule, 47 C.F.R. Section 54.604, for term commitments they may have made for services either under a signed contract or under a carrier's interstate tariffs.

## IV. CONCLUSION

U S WEST requests that the Commission grant this Petition for Reconsideration or Clarification.

Respectfully submitted,

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February 12, 1998

Attachment 1

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS (Cont'd)

### 7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN

A. Rate Stability Plan[1] (C)

The Voice Grade Rate Stability Plan (VGRSP) allows four-wire Voice Grade customers to stabilize their Channel Termination monthly rate and associated Transport Channel monthly rates for a fixed period of 3 years (36 months), 5 years (60 months), or 7 years (84 months). Additionally, to participate in VGRSP, a minimum number of four-wire Voice Grade Channel Terminations is required for the desired fixed period (except as set forth in C.3., following). The minimum number of four-wire Voice Grade Channel Terminations is 348 for the 36 month fixed period, 383 for the 60 month fixed period and 423 for the 84 month fixed period. The customer must specify the fixed period at the time the service is ordered and must agree to the associated required minimum four-wire Voice Grade Channel Terminations. VGRSP applies only to the Company portion of any circuit jointly provided with another Exchange Telephone Company. (T)

The minimum service period for VGRSP is twelve months. The monthly rates will be stabilized at the rates in effect as of the service date (due date) of the order. At the end of the fixed period, the customer may convert to month-to-month or subscribe to a new fixed period. The recurring rates will be adjusted to the rates in effect for the new VGRSP fixed period. If the customer does not make a choice at the end of the fixed period, the rates will automatically revert to the month-to-month rates in effect at the time of the change.

If the number of Channel Terminations falls below 348, the customer is no longer (M)
eligible to participate in VGRSP. Therefore, the monthly rates will revert to the
current month-to-month rates in effect and discontinuance charges as described in (M)
C., following, or Termination Liability and Waiver Policy, as set forth in 7.4.17, (C)
will apply. (M)

[1] Customers with VGRSP in service prior to the effective date of this Tariff, May 29, 1995, may utilize Termination Liability and Waiver Policy as set forth in 7.4.17, following, in lieu of Discontinuance Charges in C.1. This offer is valid until either the expiration date of their existing term or until May 29, 1998 for a 36 month term, May 29, 2000 for a 60 month term and May 29, 2002 for a 84 month term, whichever comes first. After the effective date of this Tariff, Termination Liability and Waiver Policy will be in effect for all new customers subscribing to VGRSP. (N)–(N)

Certain material on this page formerly appeared on Page 7-225.

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS

### 7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN

A. Rate Stability Plan (Cont'd)

If the Channel Termination and/or Transport Channel monthly rates decrease during the fixed period of an existing VGRSP, the customer may stay with the existing fixed period and rates or the customer may change to the lower rates by subscribing to a new fixed period which meets or exceeds their current fixed period. Nonrecurring charges and/or discontinuance charges will not apply; however, a new minimum service period will apply.

Additional four-wire Voice Grade Channel Terminations may be added to the existing fixed period at any time at the rates in effect as of the initial service date: appropriate nonrecurring charges will apply.

B. Upgrades in VGRSP

Voice Grade Service rated as month-to-month may be upgraded to VGRSP at any time without incurring nonrecurring charges. Additionally, existing VGRSP customers may upgrade to a new VGRSP fixed period at any time providing the new fixed period is equal to or longer than the current fixed period. Minimum Channel Termination requirements for the new fixed period must be satisfied for all upgrades. Nonrecurring charges and/or discontinuance charges do not apply. The monthly rates will be those in effect at the time the service is upgraded. New minimum service period applies to all upgrades.

7.4 RATE REGULATIONS

7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN (Cont'd)

C. Discontinuance of VGRSP[1] (C)

1. If the VGRSP is discontinued prior to the expiration date of the fixed period, discontinuance charges will apply.

For VGRSP discontinued prior to the completion of the minimum service period of twelve months, the discontinuance charge is equal to one-hundred percent of the Channel Termination and Transport Channel monthly rates for the remaining months of the minimum service period, plus fifteen percent of the Channel Termination and Transport Channel monthly rates for the remaining months of the fixed period.

For VGRSP discontinued after the completion of the minimum service period, the discontinuance charge is equal to fifteen percent of the Channel Termination and Transport Channel monthly rates for the remaining months of the fixed period.

[1] Customers with the Voice Grade Rate Stability Plan in service prior to the effective date of this Tariff, May 29, 1995, may utilize Termination Liability and Waiver Policy as set forth in 7.4.17, following, in lieu of Discontinuance Charges in C.1. This offer is valid until either the expiration date of their existing term or until May 29, 1998 for a 36 month term, May 29, 2000 for a 60 month term and May 29, 2002 for a 84 month term, whichever comes first. After the effective date of this Tariff, Termination Liability and Waiver Policy will be in effect for all new customers subscribing to VGRSP. (N)

(N)

Certain material previously found on this page can now be found on Page 7-223.

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS

### 7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN

C.1. (Cont'd)

If a customer with a fixed period of 60 or 84 months falls below the minimum required Channel Terminations of 383 or 423 respectively, but is equal to or greater than the minimum required Channel Terminations for 36 or 60 month fixed periods, the customer may change to the lower fixed period without incurring nonrecurring or discontinuance charges. For example, a customer with an 84 month fixed period falls below the 423 minimum required number of Channel Terminations but is at or above the 60 month minimum number of 383 Channel Terminations, may change to the 60 month fixed period VGRSP without incurring nonrecurring or discontinuance charges. The monthly rates will be those in effect at the time of the change. New minimum service period will apply. The customer may also discontinue VGRSP, however, the appropriate discontinuance charges will apply.

2. Discontinuance charges do not apply to VGRSP purchased by local, State or Federal government entities (or to customers who have purchased services solely for resale to local, State or Federal government entities) when they are discontinued prior to the completion of the VGRSP only when all of the following conditions are met:

- The service(s) purchased by the local, State or Federal government entity or by customers who have purchased services for resale to local, State or Federal government entities are utilized solely for provision of services for that local, State or Federal government entity.

## 7. RIVATE LINE TRANSPORT SERVICE

### 7.4 RATE REGULATIONS

### 7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN

C.2. (Cont'd)

- Funding for the VGRSP ordered by the authorized local, State or Federal government entity is included in the budget request for each fiscal period appropriation sufficient to cover the authorized local, State or Federal government entity's obligations under the VGRSP for that fiscal period,

- Nonappropriation may not be used as a means of terminating the service to acquire a functionally similar product or service,

- The local, State or Federal government entity ordered the VGRSP under the good faith belief that moneys in amounts sufficient to discharge its obligations could and would lawfully be appropriated and be made available for this purpose and,

- The local, State or Federal government entity, or the customer who ordered the service on their behalf, must provide the Telephone Company notarized documents agreed upon by both the Telephone Company and the customer, showing that the entity is allotted insufficient funds for the remainder of the then current fiscal period (or for a succeeding fiscal period) by appropriation, appropriation limitation or grant to continue payments under VGRSP and has no other funding source lawfully available to it for such purpose. The VGRSP may be terminated by giving the Telephone Company not less than thirty (30) days written notice. (Should the customer receive funding for the cancelled service prior to physical disconnect of service, the customer may cancel the disconnect order per Section 5.) Upon termination, the local, State or Federal government entity or the customer that ordered the service on their behalf, shall pay all applicable rates and nonrecurring charges of the VGRSP incurred through the date of termination and through the end of the then current fiscal period to the extent of lawfully available funds.

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS

### 7.4.9 ANALOG PRIVATE LINE SERVICE - VOICE GRADE RATE STABILITY PLAN

C. Discontinuance of VGRSP (Cont'd)

3. Migration to other Telephone Company services will be allowed, without incurring discontinuance charges, providing the following conditions are met:

   - The minimum period must be satisfied,
   - The request for both the disconnect order for the existing service and the new connect order for the new service must be received at the same time and must specifically reference VGRSP migration to other Telephone Company services,
   - The request for the disconnect order must reference the new connect order,
   - The due date of the new connect order must be on or prior to the due date of the disconnect order,
   - The VGRSP service being disconnected must migrate, on a circuit equivalent basis, to a new service with a rate plan fixed period that is closest to or greater than the number of months remaining in the VGRSP, and
   - The new service must be provided between the same customer locations and with the same customer of record as the disconnected service.

   New minimum service period applies to the new service. The monthly rates for the new service will be those in effect at the time the service is migrated. Nonrecurring charges for the new service will apply. In addition, existing terms and conditions for VGRSP apply to the remaining number of circuits, with the exception of the minimum 348 channel termination requirement.

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS (Cont'd)

### 7.4.10 VARIABLE TERM PRICING PLAN (T)

DS1 and Digital Data Service may be ordered at the customer's option on a month-to-month basis or for a VTPP[1] fixed period of 3 years (36 months) or (T) 5 years (60 months). The optional rate plans allow the Private Line Transport Service customer to integrate Digital services into their networks with the assurance of no Company-initiated increases in rates during the fixed period. A waiver of fifty percent or one hundred percent of the nonrecurring charges for DS1 Service ordered as VTPP may be available through DS1 NetPlan, as set forth in E., following. SONET Ring Service (SRS) 1.544 Mbps is included in VTPP, however, SRS is excluded from month-to-month and DS1 NetPlan.

For DS1 Radio Interface, the Channel Termination includes the number of DS1 channel terminations (i.e., 1 - 4) associated with the capacity of four ordered. Termination Liability and Waiver Policy as set forth in 7.4.17, following, applies to DS1 Radio Interface VTPP.

A. Fixed Period Service Rate Plans

The customer may subscribe to a 36 or 60 month fixed period service rate plan. The minimum service period for fixed period service is twelve months. The customer must specify the length of the fixed period service at the time the service is ordered.

For customers that subscribe to fixed period service of 36 or 60 months, the monthly rates for the entire fixed period will be frozen from Company-initiated increases, at the rates in effect for the fixed period on the service date.

All rate elements of a Digital Data service to be included in a fixed period service must be ordered under the same term conditions (i.e., all 36 month or all 60 month) and with the same negotiated service date. When additional features are added subsequently (e.g., Multiplexer), they will be available only on a month-to-month basis.

[1] Customers with a Variable Term Pricing Plan (VTPP) in service prior to the effective date of this Tariff, May 29, 1995, may utilize Termination Liability and Waiver Policy as set forth in 7.4.17, following, in lieu of Upgrades in Capacity, Upgrades in Transmission Speed and Discontinuance Charges. This offer is valid until either the expiration date of their existing term or until May 29, 1998 for a 36 month term and May 29, 2000 for a 60 month term, whichever comes first. After the effective date of this Tariff, Termination Liability and Waiver Policy will be in effect for all new customers subscribing to VTPP. (T)

# 7. RIVATE LINE TRANSPORT SERVICE

## 7.4 RATE REGULATIONS

### 7.4.10 VARIABLE TERM PRICING PLAN

A. Fixed Period Service Rate Plans (Cont'd)

DS1 rate elements may be ordered individually and under the month-to-month or any optional rate plan. For example, the customer may order the Channel Termination under the 36 month fixed period service plan, the Transport Channel under the 60 month plan, the Multiplexer on a month-to-month basis, and the Self (T-x)
Healing Alternate Route Protection (SHARP) feature under the 36 month plan. (T-x)

At the end of the fixed period service, the customer may convert to month-to-month or subscribe to a new fixed period service. The monthly rates will be adjusted to those in effect for the new fixed period service. Should the customer not make a choice by the end of the fixed period, the rates will automatically revert to the month-to-month option.

If a rate decrease occurs during the term of an existing fixed rate plan contract, the reduced rates will automatically be applied to the remaining term of the current contract period.

(x) Issued under the authority of Special Permission No. 95-187.